

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for liquidated damages, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing and gave testimony. Both parties confirmed receiving the evidence package submitted by the other. As such, I find that both parties have properly been served with the notice to a hearing and evidence packages under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for liquidated damages?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on November 1, 2011 on a fixed term tenancy until October 31, 2012. The Tenant gave written notice in a letter near the beginning of December 2011 to end the tenancy on December 31, 2011. Both disputes agree that the Tenancy ended on December 22, 2011 prior to the fixed term of October 31, 2012. The monthly rent was \$725.00 payable on the 1st of each month and a security deposit of \$325.50 was paid on October 7, 2011.

The Landlord is seeking \$200.00 for liquidated damages. The Tenant disputes the Landlord's claim by stating that there were health issues regarding second hand smoke that led to him ending the tenancy. The Landlord disputes having received any notice of the Tenant's health concerns. The Landlord relies on the signed tenancy agreement in clause #5 which allows for the Landlord to seek recovery. Both parties agree that the Landlord started advertising and showing the rental beginning on December 10, 2011 and 3 to 4 showings took place. The unit was re-rented for February 1, 2012.

Analysis

I find that the Landlord has established a claim for liquidated damages of \$200.00. Clause #5 in the signed tenancy agreement is valid and enforceable as the Tenant ended the tenancy prematurely before the end of the fixed term.

The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain \$250.00 from the \$362.50 security deposit in satisfaction of this claim. I grant the Tenant a monetary order under section 67 for \$112.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord may retain \$250.00 from the security deposit.
The Tenant is granted a monetary order for \$112.50 for the return of the balance of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 24, 2012.

Residential Tenancy Branch